

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

STATE OF TEXAS, *et al.*,

Plaintiffs,

vs.

No. 14-cv-254

UNITED STATES OF AMERICA, *et al.*,

Defendants.

**PLAINTIFFS' ADVISORY REGARDING
UNCONSTITUTIONALITY OF THE DHS DIRECTIVE**

Earlier today, the United States District Court for the Western District of Pennsylvania held that the DHS Directive¹ is unconstitutional. *See United States v. Juarez-Escobar*, No. 2:14-cv-180-AJS (W.D. Pa. Dec. 16, 2014) (attached as Ex. A).

In *Juarez-Escobar*, the defendant pleaded guilty to unlawful re-entry under 8 U.S.C. § 1326. While he was awaiting sentencing, the President announced the unilateral creation of a deferred action program that would afford substantive rights to approximately 40% of the Nation's undocumented immigrants, and Jeh Johnson promulgated the DHS Directive. The district court then asked both sides to brief the relevance, if any, of the President's unilateral action and the DHS Directive. After receiving briefs from both sides — including the United States Department of Justice — the district court held in a 38-page memorandum opinion

¹ Memorandum from Jeh Charles Johnson, Secretary, Department of Homeland Security, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents* (Nov. 20, 2014) (“DHS Directive” or “Directive”) (First Amended Complaint Ex. A).

that the DHS Directive violates the Constitution's Take Care Clause, U.S. CONST. art. II, § 3, cl. 5. *See* Ex. A at 18-22.

In reaching that conclusion, the court agreed with the Plaintiff States' constitutional arguments.² For example, the *Juarez-Escobar* court held that "Congressional inaction does not endow the legislative power with the Executive." *Id.* at 18; *compare* Mot. for Prelim. Inj. [ECF No. 5] ("PI Mot.") at 17-18. And the court held that the President can no more suspend the Nation's immigration laws than he can suspend the tax rate on capital gains. Ex. A at 19; *compare* PI Mot. at 32. The court concluded that the DHS Directive is unconstitutional because it eschews case-by-case determinations and instead adopts "arbitrary," "systematic," and "rigid" eligibility criteria. Ex. A at 21; *compare* PI Mot. at 10-12. Finally, the *Juarez-Escobar* court concluded that the DHS Directive is unconstitutional because it affords "substantive rights" to undocumented immigrants. Ex. A at 21; *compare* PI Mot. at 12-13.

Juarez-Escobar further underscores the Plaintiff States' likelihood of success on the merits. Moreover, given that one federal court already has concluded that the DHS Directive is unconstitutional, Plaintiffs respectfully request that this Court preserve the status quo and the full panoply of remedial options by scheduling a preliminary injunction hearing and enjoining the Directive.

² The *Juarez-Escobar* court did not reach the Plaintiff States' arguments under the Administrative Procedure Act. *See* Ex. A at 37 n.13.

Respectfully submitted.

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CERTIFICATE OF SERVICE

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